

SPEC. COM. REP. NO. 1

Honolulu, Hawaii
December 26, 2001

RE: S.C.R. No. 65
S.D. 1
H.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-first State Legislature
Interim of 2001
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-first State Legislature
Interim of 2001
State of Hawaii

Sir:

Your Joint Senate-House Investigative Committee established under S.C.R. No. 65, S.D.1, H.D.1, entitled:

"SENATE CONCURRENT RESOLUTION ESTABLISHING A JOINT SENATE-HOUSE INVESTIGATIVE COMMITTEE TO INVESTIGATE THE STATE'S EFFORTS TO COMPLY WITH THE FELIX CONSENT DECREE,"

begs leave to report as follows:

The purpose of the committee was to investigate the State's efforts to comply with the *Felix* consent decree and submit a report to the Legislature no later than twenty days before the 2002 Regular Session.

Your committee notes that during six months of hearings and intense investigative work, this Committee was troubled by much of what it uncovered about the impact of the *Felix* consent decree. Despite good intentions and improved services to some children with mental disabilities, the decree resulted in a Pandora's box of unintended consequences. Specifically, your committee notes the following factors:

- (1) The unclear requirements for compliance concurrent with departmental exploitation of the court's "money is no object" expectations;
- (2) The generally poor oversight and accountability of the two departments responsible for implementing the Felix consent decree and the curtailment of the federal court of oversight by the Legislature; and
- (3) The "superpowers" granted to the superintendent of education and the director of health that allowed them to waive the requirements of the state procurement law and to bypass personnel laws.

However, your committee notes that it faced a number of obstacles that prevented it from obtaining full access to records and key individuals, blocking an in-depth investigation of certain matters. The federal court quashed the subpoenas of key individuals appointed by the court to oversee implementation of the *Felix* consent decree. The DOE and DOH cited federal privacy laws to deny the Committee access to files. Despite the Committee's respect for privacy protections and assurances that the identities of the students could be redacted or substituted with non-descript numbers, access was continually denied. The Committee emphasizes that the scope of the inquiry was aimed at the service and provider, not at the student. Access to files to determine effectiveness of services will be a central issue should the work of the Committee continue.

Your committee presents its conclusions and recommendations in the attached report.

Respectfully submitted on
behalf of the members of the
Joint Senate-House
Investigative Committee to
Investigate the State's
Compliance with the Felix
Consent Decree,

COLLEEN HANABUSA, Co-Chair

SCOTT K. SAIKI, Co-Chair